

## Appendix F

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1991 Ames Valley Basin Water Agreement (*included on CD-ROM*)

## AMES VALLEY WATER BASIN AGREEMENT

THIS AGREEMENT is entered into as of the 10th day of January, 1991 by and between the HI-DESERT WATER DISTRICT, a County Water District (hereinafter "HDWD") and the BIGHORN-DESERT VIEW WATER AGENCY, a public agency, (hereinafter "BDVWA").

### R E C I T A L S

A. HDWD is a County Water District organized and operating pursuant to Section 30000 et seq., of the California Water Code.

B. BDVWA is a public agency formed by an special act of the legislature and operating under the Water Code Appendix Section 112-1, et seq.

C. HDWD has entered into a contract for water to be extracted from a well located in Section 24, Township 2 North, Range 5 East, SBBM in San Bernardino County, California (also referred to as the "Mainstream Well") and has adopted an Environmental Impact Report (EIR) for the construction of facilities to take water from that well.

D. BDVWA has protested that EIR, and filed suit in the Superior Court of San Bernardino County (Bighorn Mountain Water Agency, et al. v. Hi-Desert Water District, Case No. BCV 5157).

E. The parties desire to enter into this AGREEMENT for the purpose of settling the litigation, and providing information on, and dealing with the environmental impacts from water extractions from the Ames Valley Water Basin in San Bernardino County. This AGREEMENT shall never be treated or otherwise construed as an admission of liability and/or inadequacy of the EIR by either party for any purpose.

### C O V E N A N T S

NOW THEREFORE, in consideration of the preceding RECITALS and the mutual COVENANTS contained herein, the parties agree as follows:

Section 1.0 STIPULATED JUDGMENT AS AMENDMENT OF "EIR". The parties will enter into a Stipulation for Judgment embodying the terms and conditions of this AGREEMENT, and such stipulated judgment shall be deemed to be an amendment of the EIR.

Section 2.0 LIMITATION ON THE USE OF WATER. HDWD agrees that water pumped from the Section 24 Well and any additional wells owned, operated or controlled by HDWD within the Ames Valley Water Basin will be limited to eight hundred (800) acre feet per year, and that the water delivered from wells within the Ames Valley Water Basin will be used only within the Ames Valley Water Basin. The amount of water pumped in the Ames Valley Water Basin may be increased depending on the water needs of property owners within the Ames Valley Water Basin by an amount equal to one half acre feet per year for each new residential water meter installation by HDWD following approval of this AGREEMENT by the parties. The Ames Valley Water Basin is identified for the purposes of this AGREEMENT in Exhibit "A", which is attached hereto and incorporated herein by reference.

Section 2.1 MODIFICATION TO THE WELL. HDWD agrees at its expense to place a "sleeve", or other device, in the Section 24 Well to seal the upper aquifer and to prevent pumping of water from that zone. The HDWD engineer, in consultation with the BDVWA engineer, shall evaluate water quality individually in both the upper and lower aquifer and shall test for possible flow between the upper and lower aquifers. If there is agreement between engineers that a "sleeve", or other device, is not required prior to production, BDVWA agrees that the "sleeve", or other device, will be installed at a future date, if so required at that time.

Section 3.0 MONITORING PROGRAM. The parties hereto agree to establish and implement a groundwater monitoring program to mitigate any potential environmental damage to the hydrologic resources of the Ames Valley Water Basin caused by the Section 24 Well, or from additional production wells. Monitoring of the wells included in the program, as listed in Exhibit "B", which is attached hereto and incorporated herein by reference, will commence immediately following execution of this AGREEMENT. Any new production wells shall be added automatically to Exhibit "B" for inclusion in the monitoring program, and if production shall be terminated as to any production well included in Exhibit "B", it shall be dropped from the program.

Section 3.1 MONITORING TEAM. The recording of well data, sampling and the taking of well measurements shall be accomplished by a team consisting of one representative each from HDWD and BDVWA. Working together, one team member shall sample, sound and take readings and record them on a form approved by both parties. The other team member shall confirm all recorded data and both team members shall initial and date the form and distribute copies to the respective parties. Team members shall be instructed in correct data collection, sampling and sounding techniques.

Section 3.2     PREPARATION OF WELLS.     All wells in the program shall be identified by State Well Number, where possible. All wells shall have a designated reference point (top of casing or measuring tube, etc.) and the elevation of the reference point of selected wells shall be determined by a surveyor prior to production. Each well to be monitored for production shall be equipped with a totalizing flowmeter reading in gallons per minute for pumping rate and in gallons per minute, or cubic feet, for total quantity pumped.

Section 3.3     WELL MEASUREMENT AND SAMPLING.     All well sounding measurements shall be taken with a sounding device approved by both parties. The sounding device shall be calibrated at the start of the program and recalibrated at least every six (6) months thereafter. Each production well shall be off, if possible, at least two (2) hours prior to sounding for a static level. The recovery time should be consistent for all readings taken at a given well. Well measurements shall be taken on the same time of the day and date of the month, insofar as possible. Any deviation from the regular monitoring schedule shall be so noted on the recording form. Water quality samples shall be taken from production wells and the method of sampling shall be consistent for all wells sampled. All laboratory testing shall be accomplished by the same firm, if possible. Samples shall be tested according to the latest requirements of Title 22 of the California Domestic Water Quality and Monitoring Regulations and other applicable regulations. The frequency of monitoring shall be accordance with Exhibit "C", which is attached hereto and incorporated herein by reference. HDWD and BDVWA shall provide to each party copies of all available historical well data, including static and pumping water levels, pumping quantities and water quality reports and each party shall maintain identical data bases in a mutually agreed format.

Section 3.4     DATA EVALUATION.     HDWD and BDVWA shall be responsible for the submission to, and evaluation of, monitoring data by their respective consultants. Within thirty (30) days following the end of each six (6) month period, each respective consultant shall evaluate the collected data and make a written report on the progress of the monitoring program, including recommendations, if any. Copies of these, and other applicable reports shall be distributed to the other parties to this AGREEMENT.

Section 4.0 ENVIRONMENTAL ACTION CRITERIA. Criteria which shall initiate immediate environmental review are identified in Exhibit "D", which is attached hereto and incorporated herein by reference. Any water level or water quality decline exceeding the criteria shall be cause for a written request for a reduction or cessation of the pumping of the Section 24 Well. Such request shall be delivered to the HDWD office and shall be documented with supporting data.

Section 5.0 CORRECTIVE ACTION. HDWD shall reduce pumping in the Section 24 Well to an amount not to exceed one (1) acre foot per twenty-four (24) hour period within forty-eight (48) hours of receiving a written request from BDVWA. HDWD shall maintain the reduced pumping level until the general managers of HDWD and BDVWA, and their designated consultants, have reviewed collected data, met in conference to make recommendations, and have reached agreement regarding the future operations of the well. If HDWD and BDVWA are unable to agree on a course of action within thirty (30) days from the date of the original request, reduced production in pumping shall continue and the matter shall be submitted for arbitration by an independent consultant, as provided in Section 5.3 herein.

Section 5.1 PRODUCTION REMEDY. BDVWA shall, if so requested in writing by HDWD, replace water production lost from the Section 24 Well during the period of reduced pumping, not to exceed six (6) months, at a price per acre foot comparable to that currently paid by HDWD for the lost production.

Section 5.2 DESIGNATION OF CONSULTANTS. Each party hereto, shall designate the consultant to be retained to evaluate the data from the monitoring program. Such consultant shall remain the primary consultant of the party during the term of this agreement unless notification of a change is provided in writing.

Section 5.3     ARBITRATION OF ENVIRONMENTAL ACTIONS.     Respective to Section 5.0 herein, HDWD and BDVWA consultants shall recommend an independent arbitrator who shall be capable of making proper evaluation of the data, and he shall provide recommendations on corrective action, if any. The parties agree that this arbitrator will be retained to examine the data and reports of the consultants and make a binding determination on the impacts of the data and impose the most effective corrective action, if any. If the respective consultants of HDWD and BDVWA are unable to agree on a designated arbitrator within a forty-five (45) day period from the date of the original request, an arbitrator shall be appointed in accordance with the California Arbitration Act, Section 1280 through 1294.2 of the Code of Civil Procedure. At any time following implementation of the arbitrator's decision, either party may request a conference as between the general managers of HDWD and BDVWA and their respective designated consultants, to reach agreement on a proposed modification or elimination of the corrective action imposed by the arbitrator. If the general managers and the designated consultants are unable to arrive at a mutually acceptable solution, the parties shall again proceed in accordance with this Section 5.3.

Section 6.0     PROGRAM COSTS.     Program costs, other than in-house manpower, designated consultants and the support thereof, incurred by the parties relating to the program (survey, sampling, laboratory, arbitration, etc.) shall be shared equally by the parties.

Section 7.0     PROGRAM PERIOD.     The program shall be ongoing and may be expanded or terminated by the unanimous consent of all parties.

Section 8.0     INDEMNIFICATION.     Each party agrees to indemnify, hold harmless, and assume the defense of the other party, its officers, agents, employees, and elective Boards, and pay all court costs and reasonable attorneys fees relating thereto, in any action, with respect to a claim, loss, damage or injury, asserted by a third party against the party entitled to indemnification hereunder, and arising out of a negligent act, error or omission, or wilful misconduct, of an employee or agent of the party whose actions under this AGREEMENT gave rise to such third party claim.

Section 9.0 NOTICES. Any notice, tender or delivery to be given hereunder by either party to the other shall be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of mailing or in the case of personal delivery, as of actual receipt. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this Section.

TO: HI-DESERT WATER DISTRICT  
6955 Old Woman Springs Road  
Yucca Valley, CA 92284  
Attention: General Manager

TO: BIGHORN-DESERT VIEW WATER AGENCY  
P. O. Box 3838  
1720 North Cherokee Trail  
Landers, CA 92285  
Attention: General Manager

Section 10.0 ARBITRATION OF DISPUTES. Other than those disputes which shall be arbitrated under Section 5.3, any dispute or controversy arising out of, under, or in connection with, or in relation to the AGREEMENT, and any amendments thereof, or the breach thereof, shall be submitted to arbitration in accordance with the following procedures:

A party desiring arbitration ("First Party") shall give written notice to the other party ("Second Party") containing a general description of the controversy to be submitted to arbitration and designating by name and address, three proposed arbitrators acceptable to the First Party, each of whom have agreed to act as arbitrator, if selected. If the Second Party agrees upon one of the three proposed arbitrators. The Second Party shall so advise the First Party in writing within ten (10) business days of such written notice by the First Party.

The arbitrator selected shall promptly give written notice of the arbitration hearing which shall take place within sixty (60) days of the date as is selected by the arbitrator. The arbitration hearing shall take place at a location mutually agreeable to the parties, but within San Bernardino County, California.

If the Second Party fails to agree to the selection of one of the three proposed arbitrators within the ten (10) business day period, an arbitrator shall be appointed in accordance with the California Arbitration Act, Section 1280 through 1294.2 of the Code of Civil Procedure.

The cost of the arbitration shall be paid by the parties equally. Except as otherwise provided herein, the arbitration shall be conducted and enforced in accordance with the provisions of the California Arbitration Act, Section 1280 through 1294.2 of the Code of Civil Procedure.

Section 11.0 ATTORNEYS FEES. If a dispute arises, which cannot be resolved by arbitration, regarding breach or enforcement of the provisions of this AGREEMENT, the responding and/or defending party who is determined to be the prevailing party therein shall be entitled to recover all attorneys fees or other costs actually incurred in connection with resolving the dispute only if litigation is filed and judgment is rendered. In any action brought, the entitlement to recover attorneys fees and costs will be considered an element of costs and not of damages

Section 12.0 AMENDMENTS. This is an entire AGREEMENT and supercedes all prior agreements oral or written between the parties, and their agents, and cannot be amended unless in writing, with specific reference hereto by the parties authorized to be charged. Failure by either party to enforce any provisions shall not constitute a waiver of said party's right to enforce subsequent violation of the same or any other provisions.

Section 13.0 INUREMENT. This AGREEMENT shall be binding upon and inure to the benefit of the successors and assigns of the parties.

Section 14.0 CAPTIONS. The captions of Sections and Subsections of this AGREEMENT are for reference only and are not to be construed in any way as a part of this AGREEMENT.

Section 15.0 VALIDITY. This AGREEMENT will be construed in accordance with the laws of the State of California.

Section 16.0 SEVERABILITY. If any section, clause or phrase of this AGREEMENT is for any reason held to be unconstitutional or unlawful, such a decision shall not effect the validity of the remaining portions of this AGREEMENT.



IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their respective officers as of this date first above written.

HI-DESERT WATER DISTRICT

BY Carl M. Jutting  
Board President

ATTEST

Mack Jutting  
Board Secretary

BIGHORN-DESERT VIEW WATER AGENCY

BY Elmer Pace  
Board President

ATTEST

Geraldine Connor  
Board Secretary

AMES VALLEY WATER BASIN MONITORING PROGRAM  
EXHIBIT "A"  
LEGAL BOUNDARIES OF THE AMES VALLEY WATER BASIN  
(MAP ATTACHED)

The boundaries of the Ames Valley Water Basin, for the purposes of this monitoring program, shall be as follows: Township 1 North, Range 5 East, Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24; Township 1 North, Range 6 East, Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, and 21; Township 2 North, Range 5 East, Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; Township 2 North, Range 6 East, Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34; all located within San Bernardino County.

EXHIBIT "A"

AMES VALLEY WATER BASIN MONITORING PROGRAM  
EXHIBIT "B"  
LIST OF MONITORING WELLS

<u>OWNER</u>	<u>LOCATION</u>	<u>STATUS</u>
Archie King	2N/5E/26B,SBM	Dormant
DV #1 (BDVWA)	2N/5E/23M,SBM	Dormant
Joan Hayes	2N/5E/23D,SBM	Dormant
DV #2 (BDVWA)	2N/5E/27J1,SBM	Producing
DV #3 (BDVWA)	2N/5E/27J01S,SBM	Producing
DV #4 (BDVWA)	2N/5E/27R,SBM	Producing
USGS Test Well	2N/5E/27A,SBM	Dormant
Moran	2N/5E/13A,SBM	Dormant
BH #2 (BDVWA)	2N/5E/12B1,SBM	Producing
BH #3 (BDVWA)	2N/5E/12B2,SBM	Producing
Gubler Farm	2N/5E/1K1,SBM	Producing
Gubler Farm	2N/5E/1K2,SBM	Dormant
Gubler Farm	2N/5E/1G1,SBM	Dormant
Gubler Farm	2N/5E/1H1,SBM	Producing
BH #1 (BDVWA)	2N/6E/18P,SBM	Dormant
W-1 #3 (COUNTY)	2N/5E/18,SBM	Producing
W-1 #2 (COUNTY)	2N/6E/18,SBM	Producing
W-1 #1 (COUNTY)	2N/6E/7,SBM	Dormant
HD #6 (HDWD)	2N/6E/30,SBM	Dormant
• HD #10 (HDWD)	1N/6E/17,SBM	Producing
MAINSTREAM (HDWD)	2N/5E/24,SBM	Producing
• HD #20 (HDWD)	2N/6E/36,SBM	Producing
HD #21 (HDWD)	2N/5E/2,SBM	Dormant
Patty Karawczyk	2N/5E/25,SBM	Producing

AMES VALLEY WATER BASIN MONITORING PROGRAM  
EXHIBIT "C"  
WELL MONITORING FREQUENCY

<u>TIME INTERVAL</u>	<u>GROUNDWATER LEVELS</u>	<u>GROUNDWATER QUALITY</u>	<u>GROUNDWATER PRODUCTION</u>
0 to 15	Every 5 Days	1st Day Only	Daily
16 to 30	Every 7 Days	Day 30	Daily
31 to 90	Every 14 Days	Day 90	Daily
Over 91	Monthly	Annually	Daily

NOTES:

1. Time Interval is in number of days from the start of production of the Mainstream Well.
2. Static Groundwater Levels apply to all monitoring wells. Pumping levels on production wells should be noted at least monthly, where possible.
3. Groundwater Quality is applicable to production wells only. Production wells located in pairs shall be considered a single wellfield and water samples shall be rotated between each.

AMES VALLEY WATER BASIN MONITORING PROGRAM  
EXHIBIT "D"  
CRITERIA FOR IMPLEMENTING ENVIRONMENTAL REVIEW

Cumulative Water Level Decline in Feet over Time Period:

	<u>2 Mo.</u>	<u>3 Mo.</u>	<u>6 Mo.</u>	<u>9 Mo.</u>	<u>+12 Mo.</u>
Production Wells	7	8	9	10	11
Other Wells	2	3	3	3	4

Cumulative Water Quality Decline in Percent over Time Period:

	<u>2 Mo.</u>	<u>3 Mo.</u>	<u>6 Mo.</u>	<u>9 Mo.</u>	<u>+12 Mo.</u>
Fluoride Increase	30	30	30	30	30
TDS Increase	20	20	20	20	20
Alpha Increase	50	50	50	50	50
Other Components	50	50	50	50	50

NOTES:

1. All Criteria is measured relative to values in individual monitoring wells that shall be measured prior to the start of production of the Mainstream Well. These values shall constitute the "Baseline Values" for Water Levels and Water Quality. The initial measurements shall be reviewed by the parties for consistency with historical measurements.